SPEECH

OF

MR. BARNARD, OF NEW YORK,

IN

THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

December 29, 1843, and January 4, 1844

ON

THE BILL TO REFUND THE FINE

IMPOSED UPON

GENERAL JACKSON.

WASHINGTON:
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1844.

SPEECH.

[The following speech on the bill to remit to General Jackson the amount of the fine imposed on him at New Orleans for contempt of court, was commenced in the House of Representatives, in Committee of the Whole, on Friday, the 29th of December, then interrupted by the adjournment of the House, amd continued on Tuesday, the 2d of January, and again interrupted by the operation of the one-hour rule. No further opportunity having occurred for completing the view of the subject intended to have been presented, this sketch is made to embrace some matter which was cut off in the manner stated.]

Mr. BARNARD spoke to the following effect:

Mr. CHAIRMAN: Of course, I understand that this bill is to pass this House, and I am not at all surprised at the impatient zeal which we have seen manifested in its behalf. Of course, I understand also that the Eighth of January is at hand, which "the party" have already determined to signalize here at the capital by public demonstrations, and that it is deemed important this bill should be forced through, preparatory to the patriotic performances of that day. I shall not stand long in the way, but I cannot consent to let this bill go to the vote without stating to the House my views of the nature and effect of the measure here proposed. There are doubtless those in this House who are not familiar with the facts in relation to the fine imposed on General Jackson, who will yet, as "true men," be expected to vote for this bill. It will do them no harm to know something of these facts before they vote. Besides, gentlemen had better moderate the violence of their sudden zeal for what they call an act of justice to General Jackson. It will look better. They have been rather long and late in making the discovery that the remission of this fine is an act of justice due from the country. It is twenty-nine years since the battle of New Orleans was fought, and for twenty-six years, or thereabouts, this remission was never once proposed; and that is rather a long period for men's sense of injustice to sleep, especially towards a successful military chieftain, and one who has all the while filled a large space in the popular regard. And these Halls have not always been filled with the enemies or opponents of General Jackson. Why was not this act of justice thought of before the close of Mr. Madison's Administration, after the war?* or in the Administration of Mr. Monroe? Especially we may ask why it was neglected during the twelve years when General Jackson himself and his nominee held the reins of government? If motives of delicacy restrained his friends in the period of his own Administration—think of his friends being restrained by motives of delicacy!—what restrained them in the period of Van Buren's Administration? No, no; gentlemen must not expect the country to give them much credit for the clamors in which they now indulge for justice to General Jackson. They must not be surprised if they find themselves violently suspected of a desire and design to produce a certain political effect by

* It is believed, if the correspondence between the Secretary of War and General Jackson at the period could be found, it would show that his conduct was condemned by the Government in no measured terms. Such a correspondence *did* take place, it is believed; and it is not found in the War Department. What has become of it?

this measure—to awaken anew the popular admiration for the heroic deeds of the favorite old chief, in the hope of turning it to some good account in this particular juncture of their affairs.

But let this pass. "The party" is welcome to all they can make out of it for the approaching Presidential election. What concerns me much more nearly, as it should concern all who love their country, is to take care, as far as may be, that the Constitution shall be defended against every species of violent assault to which it may be subjected in this House. In my judgment, this bill, considering the ground on which it is made to stand by those who present and advocate it, if permitted to pass without some declaratory amendment or saving clause, must be regarded as aiming a deadly blow at the vital principle of this Government, and of all constitutional systems and all regulated liberty.

The bill, to which it is evident enough no amendment whatever is to be allowed, provides that the sum of one thousand dollars, with the interest from the day when the fine was imposed and paid, shall be—not remitted, that is not the word, for that would imply a pardon, which I might be ready enough to grant, but—shall be refunded or paid back to General Jackson. The amount of the fine is to be refunded, *with interest*. This is precisely what was done in the case of Matthew Lyon, on whom a fine had been imposed under what is called the sedition law. It was ordered to be refunded, with interest—a course which implied that, in the opinion of Congress, the fine had been wrongfully imposed, and the money wrongfully received and retained. The same thing is implied in the present bill. Nor is this point left to implication.

The refunding of the fine imposed on the General is demanded mainly on two grounds, the substance and true effect of which I will state as I understand them.

The first is, that though it should be admitted that the civil power rightfully reigned at New Orleans, and not the military, yet the fine was illegally imposed, the Judge having acted altogether without authority. To this it is added, that the Judge, having acted in his own cause, acted vindictively and oppressively.

The other ground taken in the case is this: that General Jackson had committed no offence against the Constitution and laws of the country or the public authorities, since he had himself suspended all civil authority and government in New Orleans by setting up the military power, under the name of martial law, as supreme and exclusive, which he had regarded as required by the necessity of the case; of which necessity he was the sole judge, responsible of course only to the popular sentiment of the country.

Mr. Chairman, I am sorry that it should have been deemed necessary by the friends of this bill to make an assault either on the character of Judge Hall or on the well-settled law of contempts. No sacrifice seems to be too great or too costly for them to offer before the shrine of their idolatry. The able and learned gentleman from Pennsylvania, who introduced this bill, (Mr. C. J. Ingersoll,) has written a book to prove, amongst other things, that courts of justice in general, and Judge Hall in particular, had no right to punish for contempts. And he objects especially to this power in the courts of the United States, because, as he maintains, they have no common law jurisdiction. Now, sir, my answer to this is, that the right to punish for contempts is not so much a common law right as it is a power inherent in the constitution of every court, just as the same power is inherent in the

constitution of this and of every parliamentary body. That is the well-considered and well-established doctrine of the Supreme Court of the United States, as any gentleman may see by turning to the case of *Anderson and Dunn*, which originated in this House. It is a power incident to the authority granted to or possessed by every court. It is a principle of common sense, as well as of universal law, that when any power or authority is granted, whatever incidental powers are necessary and proper for carrying the granted power into effect go along with it. Thus every court must necessarily have the power to protect itself against violent interruptions or disturbance, and to enforce obedience to its lawful commands. Instances of abuse of the law of contempts have no doubt existed; but that is a poor argument to offer against the existence of the law; and a judge is no more justified in assuming a jurisdiction not belonging to him under color of this power, than he is in assuming any other jurisdiction not within his competency.

But, sir, in the case of the courts of the United States, the power to punish for contempts has, as we all know, been confirmed by express statutes. It is found in the judiciary act of 1789, passed in the first year of the Government. And, at a later period, in 1831, after an instance of abuse of the power in the case of Judge Peck, and for which he was subjected to impeachment and trial, a declaratory act was passed defining the authority of courts to punish for contempts. The authority exercised by Judge Hall in the case before us, though long before the act last referred to, was strictly within the definition and limitations of that act.

At the period when the offences of contempt, for which summary punishment was inflicted, were committed by General Jackson, Judge Hall was holding a regular term of the District Court of the United States for the District of Louisiana. On the 4th of March, 1815, which was Saturday, the Court was in session, and a cause on the calendar was regularly heard. On the same day, two causes were specially assigned for trial—one to be heard on the following Tuesday, and the other on Wednesday. Before this time came, however, the course of justice was forcibly obstructed by General Jackson.

On the 5th of March, Mr. Louallier, a Senator in the State Legislature, a citizen of Louisiana—not a soldier—was arrested by a military order of General Jackson, placed in close confinement, and held to answer with his life for having dared to send to a public newspaper in the city of New Orleans a communication complaining of an act of tyranny on the part of the General towards certain French inhabitants of the city. Upon application, which was immediately made to Judge Hall, at chambers, founded on the proper petition and affidavit, a writ of *habeas corpus*—that great writ of English and American liberty without which no nation on earth ever has been or can be free—was ordered to issue, to be directed to General Jackson, commanding him to produce Louallier before the Judge the next day, and to show the cause of his arrest and detention. The order for this purpose was made on the back of the petition and affidavit, which had been filed in Court, and which had thus become a part of the records of that tribunal. Of course it was the duty of the clerk to make out and issue the writ. As an act of courtesy to General Jackson, and to give him an opportunity voluntarily to retrace the audacious step he had taken, the Judge directed that notice should be immediately given him of the order he had made. This act of courtesy was answered by a military order for the arrest of Judge

Hall, which was promptly obeyed and executed by an armed force of sixty men, commanded by a field officer. At the same time, which was on the evening of the same 5th of March, General Jackson sent one of his military aids to Mr. Claiborne, the clerk of the District Court, with a written command to deliver up to him the order which had been made by the Judge for the issuing of the writ. Mr. Claiborne had the courage to refuse to acquiesce in this high-handed interference, and chose rather to accompany the officer, with the paper in his own pocket, into the dread presence of the imperial commander. Unawed by the presence or the threats of the General, he calmly told him that he should do his duty, and issue the writ. General Jackson having then got the paper in his possession, by asking to look at it, forcibly retained it against the remonstrances of the clerk, who was dismissed without it.

The object of all this violent proceeding was, no doubt, to prevent the issuing of the writ. With the Judge in close confinement, and the order for the writ in his own possession, he flattered himself that the course of justice was effectually obstructed. He was mistaken. The writ was issued and placed in the hands of the marshal on Monday morning, the day on which it was returnable, who had the courage to serve it, although he had been significantly told by the General, the evening previous, that "he had shopped the Judge, and he would treat any person who might improperly meddle with *his camp* in the same manner." On the service of the writ, which happened to have been done at an hour later than that named by the Judge for the hearing—a circumstance in no manner affecting the validity of the process or the proceeding—General Jackson treated it with contemptuous disobedience. Louallier was still kept in confinement, and on the same day was ordered for trial before a military tribunal, appointed by the General. All this took place long after news of peace which, no body doubted, had reached New Orleans. Judge Hall was kept in close custody for one week, when, under another military order of the commanding general, he was taken from the guard-house by a file of dragoons, ignominously escorted through the city, and about four miles above it, and then set at liberty, with a written order not to return to New Orleans until peace should be *officially* proclaimed.

On the 22d of March, Judge Hall, having returned to the city, formally opened his court, when an application was immediately presented, on proper depositions, by the United States District Attorney, for a rule on General Jackson to show cause why an attachment should not issue against him for contempts. The rule was granted, and General Jackson appeared in court to answer on the 27th. On this occasion it was that the General offered in his defence the paper to which reference was made by the gentleman from Louisiana, (Mr. SLIDELL.) This paper was deemed objectionable, and was not received. It was according to General Jackson's summary mode of doing business, but was not according to the rules and practice of that court. Full latitude of defence, however, appropriate under a rule to show cause, was given, as the written rules laid down by the Judge will show. I will read them:

"1st. If the party object to the jurisdiction, the court is ready to hear."

"2d. If the party's affidavit contain a denial of the facts sworn to, or if he wish to show that the facts charged do not in law amount to a contempt, the court is ready to hear."

"3d. If the answer contain any thing as an apology to the court, it is ready to hear."

"4th. If the party be desirous to show that, by the Constitution or laws of the United States, or in virtue of his military commission, he had a right to act as charged in the affidavits, the court is ready to hear."

On the 29th of March, after argument and full deliberation, an attachment was ordered to issue; and on Friday, the 31st, General Jackson again appeared in court. Interrogatories were now presented and filed, according to the usual course of proceeding in such cases. They were addressed to the party accused, and he was required to answer them. The rule laid down by the Judge was this: "He may object to any of the interrogatories as improper, or he may deny the facts charged, and purge himself of the contempt on oath. *His single testimony countervails that which may have been adduced.*" General Jackson contemptuously refused to receive the interrogatories, or to make any answer to them. "Whereupon," says the record, "the court proceeded to pronounce judgment; which was, that Major General Andrew Jackson do pay a fine of one thousand dollars to the United States."

Mr. Chairman, I shall not stop to reaffirm the power of the District Court of Louisiana to punish for contempts, and I shall leave the plain narrative of facts just given to speak for itself in regard to the contempts actually committed, and the entire propriety, impartiality, deliberation, and dignity, of the whole course of proceeding on the part of the Judge. The fine imposed was one thousand dollars—a sum which has been complained of as excessive and vindictive. Let the narrative of facts answer. It was the penalty imposed not for disobedience only to the great and sacred writ of habeas corpus, beginning with his outrageous conduct in regard to the order for the issuing of the writ, but for a forcible obstruction, with military array, of the whole course of justice in regard to that writ; and the sum is precisely that imposed by statute in several of the States of this Union upon any Judge himself who shall refuse, on a proper application, to grant this same writ of habeas corpus.

But the learned gentleman from Pennsylvania, (Mr. C. J. Ingersoll,) in his book on this subject, has argued against the power to punish for contempts in the courts of this country, because the Constitution declares that no person shall be held to answer for a crime except upon a presentment or indictment of a grand jury. There must be trial by due process of law. Sir, since the Revolution of 1688 in England, this is as much and as expressly the constitutional doctrine of that country as it is the constitutional doctrine of this. We borrowed it from England. And yet this power to punish for contempts in a summary way has never, that I know of, been doubted in England. And nothing, I think, short of essential and sublimated Democracy can lead any man to doubt it here. The truth is, that in case of contempts there is properly *no trial*—there can be none. The facts are taken only on the confession of the party accused, or on his failure or refusal to answer the matter alleged against him. Said Judge Hall, in this very case, "he may deny the facts charged, and purge himself of the contempt. His single testimony countervails that which may have been adduced." The party is guilty or not, just on his own conduct or showing in the presence of the court. General Jackson refused to receive or answer the interrogatories presented to him, and the fine was imposed, of course.

But, sir, gentlemen have not been content with impeaching the legal accuracy of Judge Hall in this proceeding. An attack has been made on his character as a man—an attack which I regret the more on account of the source from which it has proceeded. It comes from a gentleman (Mr. Slidell) ably representing on this floor the New Orleans district of the

State of Louisiana, and the attack falls on the memory of a citizen of that city and State, no longer living to defend himself, and who died leaving no male relatives to step forth in vindication of his character and his fame. He held high office in that State, and I think I am warranted in saying that he adorned his judicial station and honored the State of Louisiana, by his great learning, his remarkable powers, his sound principles, and his unyielding integrity. I appeal to the testimony of those who knew Judge Hall personally, and who are therefore better witnesses of what he was than those who testify from rumors which prejudice and malice have invented and put afloat. Mr. Brackenridge, of Pennsylvania, in a published letter relating to the matter which we have now in hand, says of Judge Hall: "I knew him well; he was a modest, single-hearted, retired student, deeply learned, of unsuspected integrity, and as innocent as a child of all party intrigue or faction. He thought only of the honest and faithful discharge of his duty. He had been taken by Mr. Jefferson from the bar of Charleston, and, excepting two maiden sisters whom he supported, he had no family or connexion." An aged and venerable gentleman now residing in this city was the fellow-student of Mr. Hall at college in Pennsylvania, where Hall's family then resided, and his acquaintance with him was renewed at a late period of his life. Mr. Hall was sixteen years of age when he first knew him, and, from his uncommon powers and his attainments, he was the foremost man in college; and his whole subsequent career was answerable to this beginning. Though modest and retiring, he was distinguished and honored throughout his life. Such I believe to have been the simple truth in regard to Judge Hall.*

Yet the gentleman from Louisiana has deemed it necessary, in his zeal to serve General Jackson, to heap obloquy on the character and memory of this man. No doubt the gentleman believes the representations he has made to this House: and I have as little doubt that his representations have done the greatest injustice to the memory of a most worthy, estimable, and honorable man and magistrate. The gentleman has been pleased to stigmatize Judge Hall as a skulking coward, because, as he alleges, he did not cast off his robes of office and enter the ranks of the army, to fight with the youngest and the bravest there, as if there was no courage worth commending (even if the gentleman were accurate in his facts) except that which consists of a brute insensibility to danger and death. The gentleman charges also that Judge Hall indulged in intemperate habits. It may be so—many a great and good man has fallen in this way. But Judge Hall held his office I believe to his death, and no formal complaint of this sort was ever preferred against him. And, finally, we are told that Judge Hall was a foreigner: not an Irishman, or a Frenchman, or a Spaniard—that could be endured: but he was an Englishman, and therefore he was liable to a violent suspicion of disaffection. Sir, this is a mode of argu-

* It has been found, on an examination of the records of the Senate, that Mr. Hall was appointed, on the nomination of Mr. Jefferson, in 1802, a Judge of the fifth Circuit Court of the United States, which comprised the States of North and South Carolina and Georgia. This was under the act of 1801, organizing anew the courts of the United States, and which was shortly afterwards repealed. Upon the organization of a Territorial Government in the newly acquired Territory of Louisiana, in 1804, Mr. Hall was immediately transferred to New Orleans, on the nomination of Mr. Jefferson, as a Judge. And, finally, on the admission of Louisiana into the Union, as a State, in 1812, he was appointed, on the nomination of Mr. Madison, to the judicial office which he held when the outrages referred to in the text were committed upon him.

ment which suited the short methods commonly adopted by General Jackson with all who ever crossed his path or stood in his way; but I must be allowed to say that the gentleman from Louisiana is capable of better modes of reasoning, and should not have adopted this. Sir, I have no more doubt of the patriotism and love of country of Judge Hall than I have of the patriotism of General Jackson, or of any friend of his, or of any supporter of this bill. I know not, I care not, on which side of the Atlantic he was born—he was an American citizen, and long had been one, holding a high judicial office under the Government, enjoying the confidence of Jefferson and Madison, and distrusted I believe by nobody. And all this vituperation now cast on him, all this effort to blast his name and memory, why has it been introduced into this debate? If the gentleman from Louisiana was willing that this bill should stand on its own merits, then this attempt to blacken the memory of Judge Hall was wholly gratuitous. If every thing he has uttered on this topic—so grateful as it evidently was to the genuine worshippers here of the iron-willed old man, who, whatever may have been his services to the country, (and I think them very great,) has done more in his lifetime, by his acts and his example, to plant disease and lingering death in the vitals of the Republic than all other living men—if all, I say, were historically true which the gentleman has so eagerly communicated in regard to Judge Hall, how, I ask, does it help the argument in favor of this bill? Let the gentleman put it into a logical shape, and see how it would stand? He would say: This Judge inflicted a fine for contempt on General Jackson. This was legal and just, or it was not. But the Judge was an exempt and a non-combatant in the war; he was also a generous liver, and is said now and then to have indulged in a glass of wine too much; and, worse than all, he is reputed to have been born in England—*therefore*, the Judge had no right to inflict a fine on General Jackson for contempt. *And it follows* that General Jackson had a right to trample on the writ issued by the Judge in behalf of the liberty of an American citizen, and to make his violent obstruction to the course of justice sure by the forcible arrest, imprisonment, and ignominious banishment of the Judge himself!

But, Mr. Chairman, I pass on to other matter of more importance. The main ground on which this bill is supported by its friends, and which has been stated by me already, I must now take the liberty again distinctly to repeat. It is this: that General Jackson committed no offence at New Orleans against the Constitution and laws of the United States, or the public authorities, because he had himself, by virtue of his military commission, suspended all civil authority and government in that city and neighboring country (except such as he might see fit from time to time to tolerate) by setting up the military power, under the name of martial law, as supreme and exclusive—such suppression and subversion of the civil power having been required, in his opinion, by the necessity of the case, of which necessity he alone had a right to judge. For this judgment, and his conduct under it, it must be added, he was responsible, not to the public authorities, for the case was one over which the Government had no constitutional jurisdiction, but to the popular sentiment of the country only. This I believe to be a fair statement of the position taken by the friends of this bill; and I must say that, in my judgment, a doctrine more dangerous and fatal to all regular Government, to all constitutional forms, to all legal authority, and to every principle of civil liberty, has never been propounded in any coun-

try. Once establish this doctrine, as is now sought to be done, by a solemn formal legislative recognition, and constitution, laws, and liberty, exist thenceforward by the forbearance of any and every military chief who may command an army in the field strong enough for the occasion, and which he may have the address to win to his ambitious and unhallowed purposes.

The justification here offered in behalf of General Jackson is the same in substance that he set up for himself at the time; and by recurring to his declarations at that period, we shall see distinctly what kind of martial law it was that was insisted on then, and is justified now.

In the paper which he offered in his defence before the Judge, General Jackson said that "*he intended to supersede such civil powers as in their operation interfered with those he was obliged to exercise.*" He declared to Mr. Claiborne, the clerk of the District Court, in the evening shortly after the arrest of Judge Hall, "that his (the Judge's) conduct in the instance in question had brought him under the cognizance of his (the General's) general order [his order declaring martial law;] that this was his (the General's) camp, [his order for martial law embraced '*the city of New Orleans and its environs,*'] and that '*no person or power must or should be over him in it.*'" And Mr. Duplessis, the United States marshal, informs us that, on the same occasion, the General said to him "that he had shopped the Judge—and he would treat any person who might improperly meddle with his camp in the same manner; and that *so long as martial law continued he would acknowledge no other authority than that of the military.*"

In all this there was no equivocation; all was direct and open. Throughout his military district, as far as his command extended, or in such part of it as he saw fit, martial law, at his option and discretion, reigned supreme. He had published his orders laying "New Orleans and its environs" under martial law; and we shall see him in one case stretching the "environs" so as to make his martial law operate to the distance of a hundred and twenty miles. All this was claimed to be "his camp," and in "his camp" no person or power should be over him—he would acknowledge no other authority than that of the military. If any civil powers interfered with those he felt obliged to exercise, they were or would be superseded. In short, the military power, which was nothing less than the unquestioned and unquestionable law of his own will—a law above all law—was the paramount, and, so far as he chose, the exclusive power.

And, to comprehend the full enormity of this sort of martial law, we must not fail to distinguish between it and the military law of the country, as recognised by the Constitution and established by statutes—that military law, as distinguished from the civil power, prescribed expressly for the exigencies of war as well as for times of peace, and which is the only law of arms known to the Constitution. Congress is authorized by the Constitution "to make rules for the government of the land and naval forces;" and also to provide "for governing such part of the militia as may be employed in the service of the United States." Under that authority statutes have been passed providing for these objects. That for the government of the army prescribes a regular code, consisting of one hundred and one articles. This code is very carefully limited in its application to officers and soldiers of the regular army, and to the militia when in the service of the United States, including persons necessarily attached to the army, or to the

service in the artillery and corps of engineers, and receiving pay as such. No citizen, not a soldier, or attached to the army, of course, is subject to this code, or ever can be. It is forbidden by the Constitution. It is only by an exception in the fifth article of amendments that offences "in cases arising in the land or naval forces, or in the militia when in actual service," can be tried by courts martial, or otherwise than by "presentment or indictment of a grand jury." And hence it is, too, that no citizen, no person owing allegiance to the United States, can be tried as a spy. And so the military law prescribes.

Now, General Jackson's martial law was something very different from all this. He ordered a citizen, as we shall see, to be tried by a military tribunal as a spy. And when his innocent victim was likely to escape by an acquittal, he published a general order in which he declared that "martial law, being established, applies, as the Commanding General believes, to all persons who remain within the sphere of its operations, and claims exclusive jurisdiction of all offences which aim at the disorganization and ruin of the army over which it extends. To a certain extent, it is believed, it makes every man a soldier, &c. Every man, therefore, within the limits to which it extends, is subject to its influence."

Here, then, was a complete overleaping, by one bound, not of the military code only, but of all regular government, of all constituted authority. Powers were assumed and actually exercised which Congress and the Executive together could not have employed. Congress may suspend the habeas corpus "when, in cases of rebellion or invasion, the public safety may require it," but Congress cannot suspend the Constitution itself, and all regular government under it, by establishing that sort of martial law which was attempted by General Jackson. A proclamation of such martial law by Congress or the Executive would in itself be a dissolution of the Government. It would be a revolution. And yet, what Congress and the Executive could not do, a General in the field may do! Congress could not compel or authorize any citizen, not a soldier or attached to the army, to be tried by a court martial for any thing; Congress could not subject an American citizen, soldier or no soldier, to be tried as a spy; yet all this may be done by a Commanding General!

The authority assumed by General Jackson at New Orleans was such as not only no President of the United States but no monarch of England could or would at this day dare assume. In England, under her Kings of the Stuart line, this sort of martial law existed to a limited extent. The King raised armies, and prescribed rules and regulations for their government, by his own authority. He appointed or authorized courts martial for the trial of offences in cases arising in the military forces. And he went further, and for what were called military offences—in cases of insurrection or rebellion—he appointed military commissions or tribunals for their trial, though those offences were committed by persons in no way connected with the army. One of the last notable examples of the sort was in the rebellion of the unhappy Duke of Monmouth, the son of Charles II and Lucy Walters. The revolution of 1688 put an end to these abuses. The Bill of Rights, subscribed by the hand of William III, made express provision against the raising of an army, or providing for its government, by the King, without authority of Parliament, and against subjecting any subject not attached to the military forces to any kind of punishment by martial law. Neither the King nor Parliament itself, which is said to be om-

nipotent, can, under the Constitution of that country, at this day do what General Jackson did at New Orleans—abolish the civil power, and set up the military authority and martial law in its place. And to this day, so justly jealous are the British people of the military power, that the army exists in England only by the authority of an act of Parliament called the Mutiny act, which is never passed for a longer period than one year; and the military code for the government of the forces rests on the same temporary authority.

We have only to look into our American Constitutions to see that the same true Anglo-Saxon jealousy of the military power characterized our fathers. Almost without exception, wholly without exception, I believe, among the Old Thirteen—our State Constitutions take care to provide that the military shall be kept in subjection to the civil power; and the substance of the English Bill of Rights is adopted in the Constitution of the United States.

But what Congress and the President, Parliament and the King, could not do, General Jackson has done. And there are those in an American Congress, too many of them, who can stand up to justify the proceeding in the face of the world. Charity obliges me to think that they are acting in some degree under a misapprehension of the true facts of the case, and certainly under a blind devotion to a man and a party. Surely they have not fully considered what sort of martial law it was that was attempted to be enforced, or the period of time and the circumstances when the attempt was made. The original proclamation of martial law on the 15th of December, though without strict warrant of law, was nothing. As marking the spirit and energy with which General Jackson entered on the defence of New Orleans, it was such as every good citizen might have agreed to—and it is said Judge Hall himself and many others did assent to it. It placed New Orleans and its environs under a kind of military inspection, to guard against surprise, and against the ingress and egress of spies and emissaries or agents acting in behalf of the enemy. Let gentlemen look at the order for martial law, and the rules accompanying it, and they will see at once that there was nothing in them to alarm the friends of law and order. Not an authority was proposed to be exercised but such as was compatible with the continued existence of the civil power, and such as might have been used in aid of the civil power. Under that martial law, in point of fact, the laws did reign. The Legislature of the State was in session, and was not disturbed. The courts were not suppressed. The Legislature had suspended civil proceedings in the courts for a limited time, but their criminal jurisdiction remained. The habeas corpus was not suspended; nothing of the sort was attempted. Nor was this the martial law that was complained of, and which led to the fine imposed on General Jackson. It was another martial law, set up at a different time, when all excuse or apology for its existence, even in the mildest form, had been taken away. It was a martial law which distinctly proposed to abrogate, for the time, at discretion, the whole body of Constitution and laws and every vestige of civil authority, and substitute in their place the military power—the personal and irresponsible will of the commander of an army. It was a self-created dictatorship that was proposed and attempted—an absolute, unmitigated, unregulated, unrestrained military despotism. This was what General Jackson attempted, and this is what gentlemen on this floor justify and applaud.

But, Mr. Chairman, the plea of necessity is interposed—the ready plea of all tyrants, and the most dangerous of all grounds on which to admit a justification of tyranny. And I desire to be understood distinctly, in the first place, as denying, in the broadest terms, that the crime of suppressing the civil power and government of the country in any quarter, by military authority, and the substitution of the military power, admits of justification by any plea, or on any ground of necessity whatever. Remembering always that this was precisely the kind and degree of martial law, so called, which was attempted at New Orleans in February and March, 1815, I deny that martial law of that sort admits of any justification. The very plea of necessity admits, and, in my opinion, aggravates the crime.

By the Constitution, Congress is forbidden to suspend the habeas corpus, unless in a given exigency. But if the habeas corpus were suspended, this would not suspend the civil power; and Congress is not authorized, in *any* exigency, to suspend the civil power, and set up the military authority in its place. No necessity could justify Congress in proclaiming this kind of martial law. To do it would be to attempt a military revolution. How, then, can a military commander justify the like attempt, on a plea of necessity?

I can imagine cases where in a limited district the authority of the Government should be already overturned by invasion or insurrection; where anarchy reigns, or where a foreign enemy or a domestic foe has already set up a provisional or military power; in which an American general being there with his army for the purpose of reconquering that territory, and bringing it back under the rightful authority of his country, might, in the mean while, wherever he could maintain himself, and as far and as fast as his reconquest proceeded, govern by the law of arms and the military power, awaiting the return of security and tranquillity to surrender up his conquest to the Government to which it rightfully belonged. But that would be a very different thing from a direct and arbitrary suppression of the civil power where it actually exists, for the sake of setting up the military power in its place. This admits of no justification, and no conceivable necessity ever can exist for it. No threat or prospect of invasion, however imminent—no suspicion of disaffection, however violent, can make such a necessity. Surely it is quite soon enough for the Government to be overturned *by* the invasion or *by* the rebellion. But for a military commander, first to make a military conquest of his own country, or any part of it, on pretence of a necessity, in order to defend it against another conquest from without or from within, is, in my judgment, equally bold and unprincipled.

An American commander must defend the American soil with the arms and the means which the Constitution and laws put into his hands for that purpose. His army must be composed of his regular troops, the militia, and the volunteers. Exempts and non-combatants by law cannot be forced into the field. He has no authority, as General Jackson claimed, to make *every man a soldier*. And if, with such forces as the Constitution and laws afford him, he cannot make good his defence, the Constitution expects him to yield. The Constitution contemplates the possibility that, in the fortunes of war, American cities and American soil may be surrendered—but it does not contemplate the possibility that *itself* can ever be surrendered!

No doubt the violation of individual rights by military commanders—

rights of person and of property—often takes place in time of war, and especially when hostile armies meet each other in the field—oftener, much oftener, I have the highest military authority for believing, than is at all necessary. But these are individual cases, and, whatever may be the apparent or real necessity, they are all cases of trespass for which the law holds the commanders personally responsible. The Government will relieve them, as it has often done, if it believes them to have been actuated by an honest sense of duty and a spirit of just forbearance, while it will leave them to suffer, as they ought, for all acts which have been marked by a wanton disregard of the laws, or by vindictiveness and cruelty. But in all this there is no analogy to the wholesale dealings of General Jackson under his martial law, and the claim of right which he set up, and under which he acted, and which he and his friends vindicate and justify—the claim of right wholly to suppress and abrogate for the time the civil authority and government of the country, and to make his will, backed by his soldiery, the law of the time and the place. This, I say again, admits of no justification. A necessity for such a proceeding is an impossibility—at least in this country.

But, while I wholly deny that the crime of suppressing the Government and laws, and the substitution of martial law, after the manner of General Jackson, admits of justification on any plea of necessity whatever, I must also go further in this case, and deny that any apparent necessity or any probable cause existed to render that sort of martial law, at the period and the only period when it was attempted to be enforced, either important or in the least degree useful to the defence of the country. I mean to say that the plea of necessity was a mere pretence, set up to cover and defend acts in which an arbitrary and imperious disposition and will on the part of the commander, and mere personal malice and vindictiveness, might have been gratified, but which did not and could not tend in any way to advance the public service or the public interests. This is my conviction; and the course of the friends of General Jackson and of this bill has forced me into this plain avowal, and compels me to the argument and the proof. I do not shrink from the position and the task, though I should have been better satisfied not to have been obliged ever to name General Jackson again, except in connexion with those passages of his career which all agree have been both brilliant and valuable to the country.

In order to understand what it was that is complained of in the conduct of General Jackson at New Orleans, and how little pretence of necessity there was to justify it, it is important that dates should be distinguished with critical accuracy.

General Jackson arrived at New Orleans early in December. The great battle was fought on the 8th of January, when the enemy met with a most signal and complete discomfiture. From that moment the enemy thought of nothing but escape. On the 18th of January, ten days after the battle, his shattered forces were embarked and disappeared. On the 21st, three days afterwards, the main army of the victorious General was withdrawn from the lines below New Orleans, where the battle had been fought and won. On the next day after the disappearance of the enemy, the 19th, he wrote himself to the Secretary of War in these terms:

"There is, in my mind, very little doubt that his (the enemy's) last exertions have been made, in this quarter, at any rate for the present season. * * * I believe you will not think me too sanguine in the belief that Louisiana is now clear of its enemy."

On the 27th of January he addressed a letter to the Mayor of New Orleans, in which he declared himself "deeply impressed, since his arrival, with the *unanimity* and patriotic zeal displayed by the citizens;" and speaks of "the exalted sense he entertains of their patriotism, love of order, and attachment to the principles of our excellent Constitution." And, finally, upon his representation it was, no doubt, that Congress, on the 22d of February, passed resolutions expressive of their "high sense of the patriotism, fidelity, zeal, and courage, with which the people of the State of Louisiana promptly and *unanimously* stepped forth, under circumstances of imminent danger from a powerful invading army, in the defence of all the individual, social, and political rights held dear by man."

To all this it is important to add, that news of the treaty of peace concluded at Ghent reached New Orleans on *the 18th of February;* throwing the whole city, as the same news did the country every where, into one universal ecstacy of joy. This news was brought from the British fleet, then off Mobile, where it had been obtained from a London newspaper received by way of Jamaica. It was not doubted by any body. General Jackson himself did not doubt that a treaty of peace had been concluded, for he so declared in a letter addressed to the Louisiana Gazette on the 21st of February; though he suggested that peace must not be considered as established until the treaty was confirmed—a suggestion made no doubt for the purpose of preserving, as far as possible, the order and discipline of the troops under his command until it should be proper to disband them.

Now, let it be observed that in all this period, from the entrance of General Jackson into New Orleans, early in December, through all the trying scenes of the invasion and the battle, and down to the last days of February, no enforcement of martial law was attempted which has been made the subject of complaint by any body. No such martial law in fact existed as was afterwards attempted to be exercised. The Constitution and laws reigned; the public authorities were respected and obeyed. The habeas corpus was not suspended. It was not till the *28th day of February* that the first act was committed in that series of outrages which proceeded on the ground that the laws had ceased to reign, and that the military power was supreme. And long before that day, as we have seen—that is to say, fifty days before—the great battle had been fought and won; and, forty days before, the routed enemy had disappeared from that quarter, which he did not again approach within one hundred and fifty miles; and General Jackson had declared himself satisfied on two important points: first, that the enemy's last attempt had been made in that quarter; and, second, that there was not the slightest ground to suspect the patriotism and fidelity of the people of New Orleans. Add to this, that before that day, (the 28th of February)—ten days before—the undoubted news of peace had arrived at New Orleans, and the citizens were in the midst of rejoicings and festivities for that happy event.

The strange eventful drama, then, of martial law, opened with the first act on the 28th of February. At the period of the invasion of Louisiana near New Orleans, there were resident in that city certain French citizens and subjects, enjoying certain personal and commercial privileges under the treaty of cession. These French citizens, although owing no allegiance to the United States, volunteered to serve in the ranks of the American army, in defence of the city of their residence and affection; and they

behaved in that defence, as the General himself declared in public orders, with distinguished bravery. They were, of course, in the lines below New Orleans; and when the regular and main army was withdrawn from these lines, and placed in healthy and comfortable quarters in and above the city, which was done a very few days after the battle, (the 21st of January,) these French citizens—not soldiers by profession—were left in the field, and in the performance of regular military and camp duty. Many of them were left in exposed and unhealthy positions, and where great mortality prevailed. The historian of the period informs us that five hundred soldiers died at that time in the camps around New Orleans in a single month. These Frenchmen had fought bravely, however, and they were not now disposed to shrink from any proper or reasonable duty. They submitted quietly until after the news of peace had been received, when they began to think it was time they should be relieved. They applied, therefore, to the consul of their country, resident at New Orleans, for certificates of French citizenship. Upon these they were of course exempt, and could no longer be retained in the ranks of the army. General Jackson countersigned their certificates, and they were no longer under his control or within his military jurisdiction. But though, by his own confession, he had not the slightest authority over them by virtue of his commission under the laws of the United States, and discharged them accordingly, yet he dared to issue a military order banishing all of them who held these certificates, together with the consul who had granted them, to a distance in the interior not short of Baton Rouge, which was one hundred and twenty miles from their business and their homes! This order was dated the 28th of February.

General Jackson next proceeded to silence the press. On the 3d of March an article appeared in the Louisiana Courier, reflecting with some severity on his conduct towards the French citizens. He sent for the editor, compelled him to give up the author, and dismissed him with an order to publish no more such articles about him.

General Jackson next proceeded to visit the author of the article in the Courier with his vengeance. Mr. Louallier, who was the author, was arrested and placed in military confinement on the 5th of March. This gentleman was an American citizen, of French origin. He was a member of the Senate of Louisiana, and chairman of the Committee of Ways and Means. When Governor Claiborne, early in December, had recommended to the Legislature to suspend the habeas corpus, in order that Commodore Patterson might be enabled to recruit seamen for the American flotilla by impressment, Mr. Louallier, to whose committee the message had gone, reported against the measure, and in its stead recommended that a bounty should be offered for seamen of twenty-four dollars a head, and that the Legislature should appropriate six thousand dollars for this purpose, to be placed at the disposal of the Commodore. This measure was carried, with an embargo on the shipping in port for three days, and was completely successful. The habeas corpus, however, was not suspended, and I believe General Jackson never forgave Mr. Louallier for preventing it. Other measures, originating with Mr. Louallier in the Senate, prove him to have been a discreet legislator and a patriotic citizen. He had carried through an appropriation for supplies to destitute soldiers, and it is understood that he had personally attended to the proper application of the fund. But he had dared to question General Jackson's infallibility, and he placed his life in jeopardy by that act.

I have already stated the circumstances of the arrest of Judge Hall, which took place on the same day—the 5th of March. *His* offence was that of giving an order for a writ of habeas corpus in behalf of Louallier, which he could not have refused without the grossest breach of duty, subjecting him to impeachment. And here it was that the military power was first brought into violent and open conflict with the civil authority. The arrest of Judge Hall by an armed force of sixty men, with a major to command them, under the orders of the commanding general, was an act of war levied against the authority of the United States. Levying war against the authorities of the United States is levying war against the United States; and if an act of a treasonable character, according to the plain definition in the Constitution, was softened down to the offence of a contempt of court, and punished only by a fine of a thousand dollars, it seems to me that General Jackson and his friends should be the last to complain of the severity of the infliction.

Having placed Judge Hall in confinement, and made sure of his detention by directing that no civil magistrate or officer should be allowed to visit him, General Jackson made the necessary arrangements for bringing his victim, Louallier, to trial and execution. On the very next day, (the 6th of March,) he ordered a military tribunal to be organized for the trial of Louallier on charges involving his life. This tribunal was as extraordinary as the service they were called on to perform. It was not a court martial under any law or authority of the United States. If it had been a court martial under the law of Congress, it would have had thirteen members. This had only seven. A court martial under the law of Congress could only try soldiers, or persons attached to the army. Mr. Louallier was not a soldier, or in any way attached to the army. Even if a soldier by construction, under General Jackson's martial law, he was not a soldier of the regular army; and a court martial composed of officers of that army had no authority by law to try him. Every officer of this tribunal was of the regular army. Finally, he was directed to be tried *as a spy!* And no court martial under the law of Congress has authority to try a citizen, though he be a soldier also—one owing allegiance to the United States—as a spy. He was also directed to be tried *for a libel* on General Jackson! Such was the tribunal, and such were some of the charges. There were seven charges in all preferred against Louallier. Mutiny was one of them; *treason* was another, under the head of disobedience of orders! But the specifications under all the charges made the offence to consist of one and the same act—the publication of the article of complaint in the Louisiana Courier.

It is remarkable that this tribunal, which was refractory enough towards the General to dismiss all the charges except one refusing to try Louallier upon them, should have selected the charge of treason as the one which it was competent to that tribunal to entertain, and should actually have proceeded, as it did, to arraign and try a free citizen of this free Republic upon that charge. It is true it had the grace and courage to acquit him of the absurd accusation, with the certainty of incurring, as it did, the fierce rebuke of the unappeased dictator; but the independence of its members would have been better shown by an instant and indignant dismissal of every charge on which Louallier was arraigned before them.

And here I wish again to direct the attention of gentlemen particularly

to two or three dates, and to the facts connected with them. It was on the 6th of March that the order was issued for the trial of Louallier. The tribunal met on the same day, was organized, and then adjourned. The next day (the 7th) exceptions were taken by Louallier to the authority and jurisdiction of the court. On the 9th these exceptions were decided upon; and on the 10*th of March*, and not before, the tribunal (for I will persist in not calling it a court) proceeded to arraign the prisoner and to try him on the single charge which it had determined to entertain—he standing mute, refusing to plead or to make any defence whatever. On the next day, (the 11th,) the acquittal was made. Louallier, notwithstanding his acquittal, was kept in confinement till *the* 14*th of March*, and then dismissed under a general order, heaping slander and abuse on his devoted head. It will be remembered also that Hall, who was arrested on the 5th of March, was kept in confinement *till the* 12*th*, and on that day escorted by an armed band, with every mark of indignity, four miles beyond the city, and there turned adrift.

And now, what I want should be observed is this, that *information confirming the previous news of peace was received by General Jackson on the same 6th day of March* when the order was made for the trial of Louallier; and that information, though not official, was complete and satisfactory—even to General Jackson. The despatches which the express should have brought to the General from the Secretary of War had been left behind by mistake; but he bore a communication from the Postmaster General that he "was charged with despatches relative to the state of peace which had taken place between the United States and Great Britain." The General immediately, on the same day, despatched a letter to General Lambert, commanding the British forces off Mobile, notifying him of the information of peace which he had received. And, on the 8th of March, without waiting or caring to hear from General Lambert, he published an order discharging the militia—the levy *en masse*—declaring that he had received "persuasive evidence of peace." He received the *official* news of peace on the 13th.

It was, then, it will be perceived, after he had received "persuasive evidence of peace," and after he had discharged the militia on the strength of that joyful intelligence—after every pretence of danger, whether from invasion or from disaffection, was confessedly over, even if any had ever been apprehended by any body from either source since the 8th of January, which I do not believe—*it was after all this* that General Jackson persisted in keeping both Mr. Louallier and Judge Hall in strict confinement for many days; that he persisted in subjecting Mr. Louallier to trial by a military tribunal for his life, on the most frivolous and absurd charges—releasing him finally when he dared no longer to confine him—after the *official* news of peace had been received—with opprobrium and abuse; and that he offered his last indignity to the judicial power in the person of Judge Hall, by sending him forth, like a condemned criminal, under a guard of soldiers, to the punishment of exile from his home, his office, and his friends.

Mr. Chairman, the conduct of General Jackson towards both the gentlemen just named stands without the semblance of justification, excuse, or apology. It was but the customary display of an imperious, overbearing, unforgiving temper, which never could brook opposition or contradiction. His implacable wrath, which at first burned only towards Louallier, was turned next in a direction which, happily, it could not pursue without pro-

voking rebuke and punishment. That rebuke and punishment having been administered, and the Constitution and laws vindicated, I should not have been averse to relieving him, if he had asked relief, from the penalty which his offences had provoked and merited. But he will not allow me, and he will allow no man to do any such thing on any terms consistent with the supremacy of the Constitution and laws. Setting up at the time a justification which only enhanced and aggravated his offences, and which made them not merely reprehensible, but in the highest degree criminal and dangerous, he brings forward that same justification here before the assembled Representatives of the People, and insists that they shall adopt and sanction it.

The purport and design of the bill now before us—naked as it is, and to which no amendment, no saving clause, will be admitted—and the object of those who advocate it, are in no degree equivocal or doubtful. General Jackson has himself declared, in a published letter, in substance—many gentlemen here will recollect it—that he would take nothing from Congress which was not offered in a way to exculpate and justify him fully in the course which he pursued at New Orleans, and which led to the imposition of the fine. No; he would starve first. And what he has demanded his friends have not been slow to accord to him. They mean that this bill shall be taken and deemed throughout the country as a solemn, formal, legislative sanction of his course, and, of consequence, a legislative condemnation of the course of the Judge in imposing the fine. The whole argument or appeal of the gentleman from Louisiana, (Mr. SLIDELL,) as well as that offered to the public by the gentleman from Pennsylvania, (Mr. C. J. INGERSOLL,) tends to this conclusion. It is insisted that the General had full warrant for every act he performed, and that Judge Hall deserved nothing but the contempt which he received at the General's hands. In short, Congress is asked now to entertain the cause as it stood before Judge Hall on the 31st March, 1815, and to review and reverse his decision.

We are asked not to acquit General Jackson as right in intention, though possibly wrong in act, but we must go further, and pronounce in favor of the claim of unlimited, unmitigated personal power, above all Constitution and laws, which, in terms, he set up at New Orleans. We are called on to make a solemn recognition of the rightful supremacy of the military over the civil authority, wherever and to whatever extent a general in the field may see fit to proclaim and establish it; to recognise the rightful authority of a military commander to suppress, for the time being, by force of arms, the exercise of all civil powers—legislative, judicial, and executive; to abolish the whole body of civil government as far as the power of his arms can go, and set up in its place the law of arms, which is the sovereign law of his personal, uncontrolled, and uncontrollable will. Talk about it as we will, disguise it as we may, this is the point to which this bill brings us. We are told that this fine must be refunded, because General Jackson was right—not merely that he *thought* he was right, but that he *was* right. And the refunding is insisted on—not as a pittance dropped for charity at the feet of an infirm, and perhaps needy old warrior, just sinking to his last rest; not by way of pardon for an acknowledged offence, whether because that offence had been more an error than a crime, or because enough had been already done to vindicate the law: but the fine must be refunded because it had been wrongfully imposed in the first instance; because the General had been guilty of no offence whatever, and

he ought, therefore, to be relieved from the imputation and stigma of an unjust condemnation and punishment. He was right, exactly right, in what he did—right in the act, right in the purpose, and right in the ground which he has constantly insisted on for his justification. The same ground of justification is insisted on here, and it is to establish that very ground of justification (because, in truth, there is no other) that this bill is offered and urged upon Congress; and that ground of justification is just what I have stated it to be, namely, the rightful supremacy of the military over the civil authority, in the unlimited discretion of every military commander in the field in time of war. On this ground expressly the vote of members on this floor is demanded. Nothing else and nothing short of this will do. It is not enough that, overlooking his high-handed offences, this man has been twice elected President of the United States by a grateful, forgiving, and too confiding people, but he now demands that *we* shall formally adopt and ratify his worst conduct and his most dangerous opinions; that we shall partake of his guilt; that we shall become accessory to his crimes committed against the very life of the Constitution and Government of the country. For one, I shall not do it. And for the honor of the country, for the sake of human liberty, for the credit of that great conservative party to which it is my pride and pleasure to belong, I could have hoped that no man calling himself a Whig would put his hand to such a measure as this. No Whig, I know very well, will do so because he approves or means to ratify the conduct and opinions of General Jackson in the matter to which the bill relates, or adopt or sanction the grounds on which his defence and justification are made to rest. But so the bill is intended to operate, and so, if it passes, it will operate, in the view of the great body of the American people. With a proper declaratory clause, I would myself give back this money to General Jackson. Without that, I cannot do it. This fine now stands as the only just rebuke remaining of record of any of the numerous acts of lawless disregard of Constitution and laws which have so much distinguished and illustrated his whole career. It is the only thing left to show that the people *can* rebuke the tyranny of a successful soldier. I would say, let it stand, unless it can be remitted with a saving to the Constitution and laws; and, at any rate, so far as my vote or influence can go, it shall stand.